

SOUTHERN ENVIRONMENTAL LAW CENTER

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December 23, 2008

VIA FACSIMILE AND EMAIL

Kindra Callahan, Regional FOIA Officer
U.S. Environmental Protection Agency, Region 4
Fax: 404-562-8054
Email: r4foia@epa.gov

CONTROL NO.	bpc 2-RIN-00159-08		
Response Due:	12/26/09		
Category:	other		
TO:	APTMD	SECD	
FOIA	✓ SECD	CC: EAD	
WASTMD	WMD	OTHER	

Special Instructions

FW request
File Review

Re: FOIA Request—Cliffside Steam Station, Air Permit No. 04044T28

Dear Ms. Callahan:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, the Southern Environmental Law Center ("SELC") requests all documents in the possession of the U.S. Environmental Protection Agency, Region 4, ("EPA Region 4") relating to the North Carolina Department of Environment and Natural Resources, Division of Air Quality's ("DAQ") December 15, 2008 proposed issuance of a modified air permit to Duke Energy Carolinas, LLC containing minor source emissions limitations for hazardous air pollutants at Cliffside Steam Station Unit 6 in Cleveland and Rutherford counties, North Carolina.

As used in this letter, "documents" includes all written, printed, recorded, or electronic materials, communications, correspondence, memoranda, notations, copies, diagrams, charts, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages, and mail in the possession or control of EPA Region 4. This request specifically excludes documents that are available on EPA Region 4's website or on the DAQ website at <http://daq.state.nc.us/permits/psd/cliffside.shtml>. Please provide any electronic records in native file format.

I request that you provide access to and copies of these documents without charge, or at a reduced charge, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107, because reduction or waiver of fees would contribute to public understanding of EPA's activities and is not in SELC's commercial interest. 5 U.S.C. § 552(a)(4)(A)(iii). The public interest standard of the fee waiver provision of the FOIA should be "liberally construed" in favor of an organization like SELC. McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1284 (9th Cir. 1987). In support of our request for a fee waiver, the following information addresses in detail the six factors identified in the U.S. Department of Justice's Freedom of Information Act Guide & Privacy Act Overview (May 2004).

1. The subject matter of the requested documents specifically concerns identifiable "actions or activities of the government."

The requested documents concern a proposed modification to a permit for a large coal-fired power plant. Although DAQ is the agency responsible for issuing the proposed permit modification, EPA, an agency of the federal government, has responsibility for reviewing and commenting on DAQ's proposal. In addition, EPA often consults with state agencies, other federal agencies, permit applicants, and other parties regarding permit applications.

2. **The requested documents will be meaningfully informative in relation to the subject matter of the request, and the disclosure is therefore "likely to contribute" to an understanding of specific government operations or activities.**

Disclosure of documents in the possession of EPA regarding this permitting decision is likely to contribute to an understanding of the permitting decision and EPA's role in it, as discussed under factor no. 1, above.

3. **Disclosure of the requested documents will contribute to the understanding of the public at large.**

SELC disseminates public information on environmental issues, including air quality issues, in the Southeast. See 5 U.S.C. § 552(a)(4)(A)(iii). SELC's website includes information regarding SELC projects, and SELC frequently publishes reports and issues press releases regarding its projects. See <http://southernenvironment.org/newsroom/>. SELC also assists the public in locating information relating to a particular topic by collecting and posting relevant information, documents, and links to other websites. See, e.g., http://www.southernenvironment.org/cases/duke_energy_expansion_at_cliffside/.

4. **Disclosure of the requested documents will contribute significantly to public understanding of government operations or activities.**

SELC will use the requested records to participate in the public process concerning the modification of the permit for this facility, and to educate both its partner environmental groups and the public concerning the issues raised by the permit modification. See Friends of the Coast Fork v. U.S. Dept. of the Interior, 110 F.3d 53, 55 (9th Cir. 1997); Carney v. U.S. Dept of Justice, 19 F.3d 807, 814 (2nd Cir. 1994).

5. **SELC has no commercial interest in the disclosure of the requested documents.**

SELC, a non-profit organization, has no commercial interest in the requested records. As used in the FOIA, "commercial interest" means information that relates to commerce, trade, or profit. McClellan, 835 F.2d at 1285 (holding that information that might result in further compensation to requesters for a tort claim did not give rise to a commercial interest). The agency records requested do not relate to commerce, trade, or profit, nor does SELC seek to engage in commerce or trade, or to profit from, the requested records.

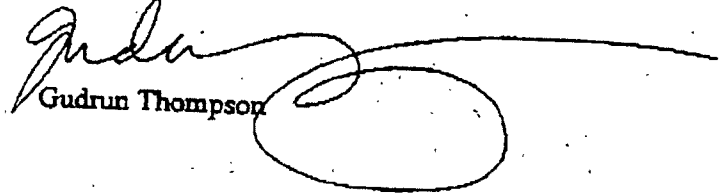
6. **"The extent to which the identified public interest in the disclosure outweighs the requester's commercial interest."**

This factor is not applicable (please see information pertinent to factor no. 5, above).

Thank you for your prompt attention to this matter. Should the volume of responsive documents be large, I ask that the documents be made available for inspection by SELC prior to

any copying. Please contact me by telephone regarding the manner in which these documents will be made available.

Sincerely,


Gudrun Thompson



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

December 23, 2008

Ms. Gudrun Thompson
Southern Environmental Law Center
200 West Franklin Street, Suite 330
Chapel Hill, North Carolina 27516

RE: Freedom of Information Act Request No. 04-RIN-00159-09
Request for Fee Waiver

Dear Ms. Thompson:

By letter dated December 23, 2008 and received in this office on December 23, 2008, you asked for a fee waiver in connection with your FOIA request regarding all documents relating to the NCDENR, DAQ, December 15, 2008, proposed issuance of a modified air permit to Duke Energy Carolinas, LLC containing minor source emissions limitations for hazardous air pollutants at Cliffside Steam Station Unit 6 in Cleveland Rutherford counties, North Carolina.

We have reviewed your fee waiver justification and based on the information provided, we are *granting your request for a fee waiver*. Any questions concerning the requested records should be directed to Mr. Leonard Dangerfield, Freedom of Information Specialist, at 404/562-9316.

If you have any questions concerning this action, please contact Melvin J. Cruver, Freedom of Information Specialist, at 404/562-8015.

Sincerely,

A handwritten signature in cursive script that reads "Kindra Callahan".

Kindra Callahan
Regional FOIA Officer